

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID E. HOLLMON, #222991,

Petitioner,

v.

CASE NO. 10-13949
HONORABLE GEORGE CARAM STEEH

JEFFREY WOODS,

Respondent.

**ORDER DISMISSING THE PETITION AS DUPLICATIVE AND
DIRECTING THE CLERK OF COURT TO REFUND THE FILING FEE**

This is a habeas corpus case filed by a state prisoner pursuant to 28 U.S.C. § 2254.

Petitioner David E. Hollmon is challenging his 1994 Wayne County convictions for first-degree murder, assault with intent to commit murder, armed robbery, and felony firearm.

Petitioner filed an identical habeas corpus petition in this District on October 1, 2010.¹

That petition is pending before the Honorable Arthur J. Tarnow. *See Hollman v. Woods*, No. 10-13916 (E.D. Mich. Oct. 1, 2010). When faced with a duplicative lawsuit,

the federal court may exercise its discretion to stay or dismiss the suit before it, allow both federal cases to proceed, or enjoin the parties from proceeding in the other suit. *Smith v. SEC*, 129 F.3d 356, 361 (6th Cir. 1997).

“[S]imple dismissal of the second suit is [a] common disposition because plaintiffs have no right to maintain two actions on the same subject in the same court, against the same defendant at the same time.” *Curtis v. Citibank, N.A.*, 226 F.3d 133, 138-39 (2d Cir. 2000); *see also Missouri v. Prudential Health Care Plan, Inc.*, 259 F.3d 949, 953-54 (8th Cir. 2001) (joining other courts that have

¹ The petition pending before this Court in case number 10-13949 was filed on October 4, 2010. Although the petition filed in case number 10-13916 is organized or collated differently, the content of the two petitions is identical.

held a district court may dismiss one of two identical pending actions).

Twaddle v. Diem, 200 F. App'x 435, 438 (6th Cir. 2006) (alterations in original).

This Court has no authority to enjoin the parties from proceeding in Petitioner's other case, which is assigned to a different judge, and there is no reason to stay this action or to allow it to proceed because the issues will be resolved by Judge Tarnow. The Court therefore elects to dismiss this lawsuit as duplicative of the habeas petition now pending before Judge Tarnow in case number 10-13916. Accordingly, the petition for writ of habeas corpus [Dkt. #1] is **DISMISSED** without prejudice.

It is further **ORDERED** that the Clerk of Court shall refund the \$5.00 filing fee to Petitioner because he also paid a filing fee for case number 10-13916, and it does not appear that he intended to file two lawsuits. Rather, it appears that he may have mailed copies of his petition to the Court in separate mailings and that the Clerk of Court did not realize the two petitions were identical pleadings.

Dated: October 12, 2010

S/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on October 12, 2010, by electronic and/or ordinary mail and also to David Hollmon #222991 at Kinross Correctional Facility, 16770 S. Watertower Drive, Kincheloe, MI 49788.

S/Josephine Chaffee
Deputy Clerk